

**Remarks**

Claims 59-76 are pending and replace the previously considered claims.

No new matter has been added. The claims are fully supported in the specification and the claims as originally filed, and are based upon the claims as previously considered by the Examiner.

**Rejection of Claims under 35 USC §§ 102(e)/103 (Brines)**

The Examiner rejected the claims under Section 102(e) as anticipated by or under Section 103(a) as obvious over Brines (USP 6,531,121). These rejections are respectfully traversed.

Without further addressing the Brines disclosure, Applicant hereby submits the enclosed **Declaration under Section 131(b)** (executed by Dr. John E. Baker) swearing behind Brines.

Applicant conceived the presently claimed invention prior to the effective date of the Brines reference of December 29, 2000, and diligently pursued the invention from the date of conception up to the date of filing of the provisional application on April 4, 2003.

The Declaration presents demonstrative evidence of conception of the invention that correlates to the invention as presently claimed, and evidence of facts establishing reasonable due diligence.

Also enclosed are the following documents in support of the acceptance of the Section 131 Declaration being signed solely by Dr. Baker:

- a) **Petition under 37 CFR § 1.47** by Poietis LLC, the owner of 100% interest in the above-identified application, the Petition being executed by Dr. John E. Baker on behalf of himself (as inventor) and in his capacity as sole member and owner of Poietis LLC. As stated in the Petition, the co-inventor, Dr. Yang Shi (aka Yang "Scarlet" Shi), refused to sign the Section 131 Declaration and advised Dr. Baker not to contact her again regarding this matter.

- b) **Statement under 37 CFR § 3.73(b)**, executed by Dr. John E. Baker, as sole member and owner of Poietis LLC, attesting to the assignment by Dr. Shi of the entire right, title and interest in the above-identified application to Poietis LLC.

It is submitted that the enclosed Section 131 Declaration is sufficient to overcome the Brines reference. Accordingly, withdrawal of the rejection of the claims based on Brines is respectfully requested.

**Rejection of Claims under 35 USC §§ 102(e) (Stamler)**

The Examiner rejected the claims under Section 102(e) as anticipated by Stamler (US 2004/0009908). This rejection is respectfully traversed.

The Examiner maintains that Stamler and the present application are claiming the same invention.

The Examiner maintains that the Section 131(b) Declaration filed 05 August 2005 is insufficient because the current rejection is made over claims of a US Pre-Grant Application of a pending application, and that the Stamler reference can be overcome only by way of *interference*, citing 37 CFR § 41.202 and MPEP 2300.

An interference may be declared between an application for a patent and a *pending* application – *not* an abandoned application.

The Stamler reference US 2004/0009908 (USSN 10/192,448) is *no longer pending*, having been *abandoned* as of January 17, 2007. Enclosed herewith is a copy of the Notice of Abandonment.

Accordingly, the Stamler reference (abandoned application) is *not* subject to an interference action.

It is submitted that the enclosed Section 131(b) Declaration is sufficient to overcome the Stamler reference (effective date of July 10, 2002), and withdrawal of this rejection is respectfully requested.

**Claim Fees.** Please charge the required fees for any excess claims to Account No. 23-2053.

**Extension of Term.** The proceedings herein are for a patent application and the provisions of 37 CFR § 1.136 apply. Applicant believes that a three-month extension of term (small entity) is required. Please charge the required fee (large entity) to Account No. 23-2053. If an additional extension is required, please consider this a petition therefor, and charge the required fee to Account No. 23-2053.

It is submitted that the present claims are in condition for allowance, and notification to that effect is respectfully requested.

Respectfully submitted,



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Reg. No. 34,259

Dated: March 15, 2007

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/192,448	07/10/2002	Jonathan S. Stamler	24862-501	6958

7590 01/17/2007  
MINTZ, LEVIN, COHN, FERRIS,  
GLOVSKY and POPEO, P.C.  
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EXAMINER
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NOAKES, SUZANNE MARIE

ART UNIT	PAPER NUMBER
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1656

MAIL DATE	DELIVERY MODE
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01/17/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

**Notice of Abandonment**

Application No.

10/192,448

Examiner

Suzanne M. Noakes, Ph.D.

Applicant(s)

STAMLER, JONATHAN S.

Art Unit

1656

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

This application is abandoned in view of:

1. ☒ Applicant's failure to timely file a proper reply to the Office letter mailed on 05 September 2006.
  - (a) ☐ A reply was received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the period for reply (including a total extension of time of \_\_\_\_\_ month(s)) which expired on \_\_\_\_\_.
  - (b) ☐ A proposed reply was received on \_\_\_\_\_, but it does not constitute a proper reply under 37 CFR 1.113 (a) to the final rejection.  
(A proper reply under 37 CFR 1.113 to a final rejection consists only of: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114).
  - (c) ☐ A reply was received on \_\_\_\_\_, but it does not constitute a proper reply, or a bona fide attempt at a proper reply, to the non-final rejection. See 37 CFR 1.85(a) and 1.111. (See explanation in box 7 below).
  - (d) ☒ No reply has been received.
2. ☐ Applicant's failure to timely pay the required issue fee and publication fee, if applicable, within the statutory period of three months from the mailing date of the Notice of Allowance (PTOL-85).
  - (a) ☐ The issue fee and publication fee, if applicable, was received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the statutory period for payment of the issue fee (and publication fee) set in the Notice of Allowance (PTOL-85).
  - (b) ☐ The submitted fee of \$\_\_\_\_\_ is insufficient. A balance of \$\_\_\_\_\_ is due.  
The issue fee required by 37 CFR 1.18 is \$\_\_\_\_\_. The publication fee, if required by 37 CFR 1.18(d), is \$\_\_\_\_\_.
  - (c) ☐ The issue fee and publication fee, if applicable, has not been received.
3. ☐ Applicant's failure to timely file corrected drawings as required by, and within the three-month period set in, the Notice of Allowability (PTO-37).
  - (a) ☐ Proposed corrected drawings were received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the period for reply.
  - (b) ☐ No corrected drawings have been received.
4. ☐ The letter of express abandonment which is signed by the attorney or agent of record, the assignee of the entire interest, or all of the applicants.
5. ☐ The letter of express abandonment which is signed by an attorney or agent (acting in a representative capacity under 37 CFR 1.34(a)) upon the filing of a continuing application.
6. ☐ The decision by the Board of Patent Appeals and Interference rendered on \_\_\_\_\_ and because the period for seeking court review of the decision has expired and there are no allowed claims.
7. ☐ The reason(s) below:

*Suzanne M. Noakes*  
*PTOL-856*

Petitions to revive under 37 CFR 1.137(a) or (b), or requests to withdraw the holding of abandonment under 37 CFR 1.181, should be promptly filed to minimize any negative effects on patent term.